

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CARL BENNETT,

Plaintiff,

No. 15-14465

v.

District Judge Matthew F. Leitman
Magistrate Judge R. Steven Whalen

MICHIGAN DEPT. OF CORRECTIONS,
ET AL.,

Defendants.

REPORT AND RECOMMENDATION

On December 24, 2015, Plaintiff Carl Bennett, a prison inmate in the custody of the Michigan Department of Corrections (“MDOC”), filed a *pro se* civil complaint in this Court. On June 30, 2016, Defendant Jackson Allegiance Hospital filed a motion to dismiss [Doc. #18], and on September 16, 2016, Defendant MDOC filed a motion to dismiss [Doc. #28]. Both have been referred for a Report and Recommendation under 28 U.S.C. § 636(b)(1)(B). I recommend that both motions to dismiss be DENIED AS MOOT.

I. DISCUSSION

On August 24, 2016, attorney Carla D. Aikens filed an appearance on behalf of Mr. Bennett [Doc. #21]. On September 22, 2016, Plaintiff, through counsel, filed a motion to amend the complaint [Doc. #28] and a response to Jackson Allegiance Hospital’s motion to dismiss, asking that a decision on dismissal be stayed until the

motion to amend was ruled on [Doc. #29].

The Court has now granted Plaintiff's motion to amend. An amended complaint supersedes the original complaint, which becomes a nullity. *See Parry v. Mohawk Motors of Michigan, Inc.*, 236 F.3d 299, 306-307 (6th Cir. 2000)(citing *In re Atlas Van Lines, Inc.*, 209 F.3d 1064, 1067 (8th Cir. 2000)). Therefore, the motions to dismiss the original complaint [Doc. #18 and Doc. #28] are moot and must be dismissed.¹

II. CONCLUSION

For these reasons, I recommend that Defendants' motions to dismiss [Doc. #18 and Doc. #28] be DENIED AS MOOT.

Any objections to this Report and Recommendation must be filed within fourteen (14) days of service of a copy hereof as provided for in 28 U.S.C. §636(b)(1) and E.D. Mich. LR 72.1(d)(2). Failure to file specific objections constitutes a waiver of any further right of appeal. *Thomas v. Arn*, 474 U.S. 140, 106 S.Ct. 466, 88 L.Ed.2d 435 (1985); *Howard v. Secretary of HHS*, 932 F.2d 505 (6th Cir. 1991); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981). Filing of objections which raise some issues but fail to raise others with specificity will not preserve all the objections a party might have to this Report and Recommendation. *Willis v. Secretary of HHS*, 931 F.2d 390, 401 (6th Cir. 1991); *Smith v. Detroit Fed'n of Teachers Local 231*, 829 F.2d 1370, 1373 (6th Cir. 1987). Pursuant to E.D. Mich. LR 72.1(d)(2), a copy of any objections is to be served

¹Dismissal would of course be without prejudice to filing any dispositive motions seeking dismissal of the amended complaint.

upon this Magistrate Judge.

Within fourteen (14) days of service of any objecting party's timely filed objections, the opposing party may file a response. The response shall be not more than twenty (20) pages in length unless by motion and order such page limit is extended by the court. The response shall address specifically, and in the same order raised, each issue contained within the objections.

s/R. Steven Whalen

R. STEVEN WHALEN

United States Magistrate Judge

Dated: December 5, 2016

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was sent to parties of record on December 5, 2016, electronically and/or by U.S. mail.

s/Carolyn M. Ciesla

Case Manager